

In the
United States Court of Appeals
For the Ninth Circuit

JEFFERSON STANDARD LIFE
INSURANCE COMPANY, a cor-
poration,

Appellant,

vs.

U.S.A., H. L. BYRAM, County Tax Col-
lector of the County of Los Angeles,
and GEORGE T. GOGGIN, Trustee
of Stockholders Publishing Company,
Inc., a corporation, Bankrupt.,

Appellees.

PETITION FOR REHEARING
BY APPELLEE H. L. BYRAM,
COUNTY TAX COLLECTOR
OF THE COUNTY OF LOS ANGELES

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No. 15349

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COUNTY TAX COLLECTOR
OF THE COUNTY OF LOS ANGELES

*To the United States Court of Appeals for the Ninth
Circuit, and the Judges Thereof:*

Comes now H. L. BYRAM, County Tax Collector
of the County of Los Angeles, and Appellee in the
above entitled cause, and presents this his Petition for
Rehearing in the above entitled cause and in support
thereof respectfully shows:

SUMMARY STATEMENT

That a rehearing should be granted in this case on the following grounds: That this Honorable Court erred in its interpretation of California law and in failing to follow the interpretation thereof by the highest courts of the State of California and by a former decision of this Court. The judgment of the District Court should have been sustained upholding the county's position that its tax lien was prior to all private liens. That by reason of such erroneous conclusion as to the status of county tax liens as against private mortgage liens this court did not decide the important question of "circular priorities" involved in this case.

ARGUMENT

I.

California constitutional and statutory provisions provide that tax liens are superior to private liens. Some of these are as follows:

"All property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership" (California Constitution, Article XIII, Sec. 1.)

“All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code.” (Sec. 201, Rev. and Tax. Code of the State of Calif.)

“Annually, the assessor shall assess all the taxable property in his county, except State assessed property, to the persons owning, claiming, possessing, or controlling it at 12 o’clock meridian of the first Monday in March. The assessor shall ascertain such property between the first Mondays in March and July.” (Sec. 405, Rev. and Tax. Code of the State of Calif.)

“The board of supervisors shall fix the rates of county and district taxes and shall levy the State, county, and district taxes as provided by law.” (Sec. 2151, Rev. and Tax. Code of the State of Calif.)

“Every tax has the effect of a judgment against the person.” (Sec. 2186, Rev. and Tax. Code of the State of Calif.)

“Every tax on real property is a lien against the property assessed.” (Sec. 2187, Rev. and Tax. Code of the State of Calif.)

“Every tax on improvements is a lien on the taxable land on which they are located, if they are assessed to the same person to whom the land is assessed.” (Sec. 2188, Rev. and Tax. Code of the State of Calif.)

“All tax liens attach annually as of noon on the first Monday in March preceding the fiscal year for which the taxes are levied.” (Sec. 2192, Rev. and Tax. Code of the State of Calif.)

“Every lien created by this division has the effect of an execution duly levied against the property subject to the lien.” (Sec. 2193, Rev. and Tax. Code of the State of Calif.)

“Except as otherwise provided in this chapter, the judgment is satisfied and the lien removed when, but not before,

“(a) the tax is paid or legally canceled or,

“(b) for nonpayment of any taxes, the property is sold to a private purchaser or deeded to the State.” (Sec. 2194, Rev. and Tax. Code of the State of Calif.)

“After thirty years succeeding the time, heretofore or hereafter, when any tax becomes a lien, if the lien has not been otherwise removed, the lien ceases to exist and the tax is conclusively presumed to be paid. The official having charge of the records of the tax shall mark it ‘conclusively presumed paid.’ ” (Sec. 2195, Rev. and Tax. Code of the State of Calif.)

“The tax collector shall collect all property taxes except as otherwise expressly provided.” (Sec. 2602, Rev. and Tax. Code of the State of Calif.)

“If an assessee of property on the unsecured roll moves to another county, the official collecting taxes on the unsecured roll in the county in which the property was assessed may employ an attorney to sue for and collect the taxes in such official’s name. This does not relieve such official from any duties.” (Sec. 3002, Rev. and Tax. Code of the State of Calif.)

“Where delinquent taxes or assessments are not a lien on real property sufficient, in the judg-

ment of the assessor or the board of supervisors, to secure the payment of the taxes or assessments, the county may sue in its own name for the recovery of the delinquent taxes or assessments, with penalties and costs." (Sec. 3003, Rev. and Tax. Code of the State of Calif.)

"In any suit for taxes the roll, or a duly certified copy of any entry, showing the assessee, the property, and unpaid taxes or assessments, is *prima facie* evidence of the plaintiff's right to recover." (Sec. 3004, Rev. and Tax. Code of the State of Calif.)

"Except as against actual fraud, the deed duly acknowledged or proved is conclusive evidence of the regularity of all proceedings from the assessment of the assessor to the execution of the deed, both inclusive." (Sec. 3711, Rev. and Tax. Code of the State of Calif.)

"The deed conveys title to the purchaser free of all encumbrances of any kind existing before the sale, except:

"(a) Any lien for installments of special assessments, which installments will become payable upon the secured roll after the time of the sale.

"(b) The lien for taxes or assessments or other rights of any taxing agency which does not consent to the sale under this chapter.

"(c) Liens for special assessments levied upon the property conveyed which were, at the time of the sale under this chapter, not included in the amount necessary to redeem the property from the sale to the State, and, where a taxing agency which collects its own taxes has consented to the sale under this chapter, not included in the amount

required to redeem from sale to such taxing agency.

“(d) Easements constituting servitudes upon or burdens to the property; water rights, the record title to which is held separately from the title to the property; and restrictions of record.” (Sec. 3712, Rev. and Tax. Code of the State of Calif.)

“It is hereby declared to be the policy of the State and the intent of the provisions in this code contained, that the final tax deed or deeds of all taxing agencies, including counties, cities and counties, cities, irrigation districts, reclamation districts, and other taxing agencies that annually levy, assess and collect taxes or assessments upon real property within the State, should be and they are hereby declared to be upon a parity with each other, and that regardless of when the levy of such taxes or assessments is or has been made, and regardless of when the final tax deed or assessment deed is or has been taken by such taxing agency, that the rights of all taxing agencies and all such deeds shall be equal and upon a parity with each other.” (Sec. 3900, Rev. and Tax. Code of the State of Calif.)

II.

That the constitutional and statutory provisions above mentioned and their predecessors in the Political Code have been construed by the state courts as giving tax and special assessment liens priority over private liens regardless of when the private lines attach.

In addition to those cases cited on pages 4 to 6 of this Appellee's Brief on Appeal, see the following:

California Loan & Trust Co. v. Weis (118 Cal. 489, 50 P. 697) where a general property tax lien was held paramount under Political Code sections almost identical with the present Revenue and Taxation Code sections, which the court found to be sufficient, *ex proprio vigore*; the court said at pages 493 to 495:

“It still remains to be considered, before leaving this branch of the case, whether the legislature of this state has, in the exercise of an unquestioned power, made the lien of its taxes paramount. As this matter, the power being conceded, depends for its determination entirely upon statutory enactment, adjudications in sister states will be of little value unless based upon identical laws.

“Our Political Code provides: ‘Sec. 3713. Every tax due upon personal property is a lien upon the real property of the owner thereof from and after 12 o'clock M. of the first Monday in March in each year.’

“‘Sec. 3716. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.’

“After further provisions for the sale of the real property for all such delinquent taxes, it is provided:

“ ‘Sec. 3788. The deed conveys to the grantee the absolute title to the land described therein . . . free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale.’

“No distinction is made by these laws between the lien which exists upon the land for the tax on personalty and the lien which exists for the tax upon the land itself. ‘Every lien’ created by this title remains until the taxes are paid or the property sold. The title which the purchaser gets under the enforcement of any tax lien by sale is free from all encumbrances. ‘A lien for taxes does not stand upon the footing of an ordinary encumbrance, and is not displaced by a sale under a pre-existing judgment or decree, unless otherwise directed by statute. It attaches to the *res* without regard to identical ownership, and when it is enforced by sale pursuant to statute the purchaser takes a valid and unimpeachable title.’ (*Osterberg v. Union Trust Co.*, 93 U.S. 424.) The mandate of our statutes puts all tax liens upon the same plane; *makes them all paramount to other liens*, and under sale for their enforcement gives to the purchaser a title free and unencumbered.

“ . . . But it is obvious that they have no weight in this consideration when the laws of our state put all tax liens upon an equality and *make each and all superior to any other charge upon the land*.

“No doubt can be entertained but that this is the true and only reasonable interpretation of the effect of our code provisions.

“It is held in *Eaton’s Appeal*, 83 Pa. St. 152, that a statute which declares that a tax shall con-

tinue a lien 'until fully paid and discharged' *ex proprio vigore* makes the lien superior to that of a judgment obtained before the tax is levied. In this state we not only have language of similar import in Section 2716 of the Political Code, but that language is aided so as to remove the need of interpretation by Section 3788, which provides that the deed conveys the absolute title free from all encumbrances." (Emphasis added.)

Pauley v. State of California (9th Cir.) 75 F. 2d 120, 132-134 (a gasoline tax case, but applying the same code sections.)

III.

The court should have followed the interpretation of California law as laid down by its own prior decision, *Pauley v. State of California, supra*.

IV.

This Honorable Court should not itself interpret California statutes, disregarding prior interpretation thereof by the highest state courts.

V.

On the other hand, this court should not have relied on *Fresno County v. Commodity Credit Corp.*, (9th CCA), 112 F. 2d 639, which is not in point inasmuch as it involves a claimed lien resulting from assessment and seizure of personal property on the unsecured roll for nonpayment of taxes by the owner.

The trustee, in his brief on file herein (pp. 4-5) concedes the correctness of the county's tax claim herein.

CONCLUSION

It is submitted that a rehearing should be granted herein.

Respectfully submitted,

HAROLD W. KENNEDY, County Counsel
and

ANDREW O. PORTER,
Deputy County Counsel

*Attorneys for Appellee H. L. Byram,
Tax Collector of the County of Los Angeles.*

CERTIFICATE OF COUNSEL

The undersigned, ANDREW O. PORTER, Deputy County Counsel of the County of Los Angeles, and one of the attorneys for the Appellee H. L. Byram, Tax Collector of the County of Los Angeles, does hereby certify that in his judgment the above Petition for Rehearing is well founded and is not interposed for delay.

ANDREW O. PORTER

